

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

WILLIAM KELLER,	:	CIVIL ACTION NO. 1:06-0080
	:	
Plaintiff	:	(Judge Conner)
	:	
v.	:	
	:	
MICHAEL O. LEAVITT,	:	
Commissioner of Social Security,	:	
	:	
Defendant	:	

ORDER

AND NOW, this 28th day of November, 2006, upon consideration of the report of the magistrate judge (Doc. 6), recommending the denial of plaintiff's appeal from the decision of the Commissioner of Social Security, to which objections were filed (Doc. 7), and, following an independent review of the record, it appearing that the deposition of plaintiff's treating physician is cumulative and immaterial,¹ see 42 U.S.C. § 405(g) (stating that remand to the Commissioner of Social Security is permitted "only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding"), and that there is substantial evidence to

¹ Plaintiff contends that this case should be remanded for consideration of the "new evidence" contained in the deposition of his treating physician. (See Doc. 3 at 223-94.) However, the evidence to which plaintiff refers is not new. The treating physician concludes in his deposition that plaintiff is "permanently disabled." (Doc. 3 at 256.) This conclusion is cumulative of a January 2005 letter in which the treating physician reached a similar conclusion. (Doc. 3 at 186-87); see also Newhouse v. Heckler, 753 F.2d 283, 287 (3d Cir. 1985) (holding that evidence is not "new" if it is "merely cumulative of what is already in the record").

support the decision of the Administrative Law Judge (“ALJ”), see 42 U.S.C. § 405(g) (providing that the “findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive . . .”), and the court finding that the ALJ afforded appropriate weight to the opinion of plaintiff’s treating physician, see 20 C.F.R. § 404.1527(d)(2) (listing factors to be used in determining the amount of weight to be given to a medical opinion), it is hereby ORDERED that:

1. The report and recommendation of the magistrate judge (Doc. 6) is ADOPTED.
2. Plaintiff’s appeal from the decision of the Commissioner of Social Security (Doc. 1) is DENIED.
3. The Clerk of Court is directed to CLOSE this case.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge